

1 WILLIAM A. ISAACSON (*Pro hac vice*)
(wisaacson@bsfllp.com)
2 STACEY K. GRIGSBY (*Pro hac vice*)
(sgrigsby@bsfllp.com)
3 NICHOLAS A. WIDNELL (*Pro hac vice*)
(nwidnell@bsfllp.com)
4 BOIES SCHILLER FLEXNER LLP
5 1401 New York Avenue, N.W., Washington, DC 20005
Telephone: (202) 237-2727; Fax: (202) 237-6131

7 RICHARD J. POCKER #3568
(rpocker@bsfllp.com)
8 BOIES SCHILLER FLEXNER LLP
9 300 South Fourth Street, Suite 800, Las Vegas, NV 89101
Telephone: (702) 382-7300; Fax: (702) 382-2755

10 DONALD J. CAMPBELL #1216
(djc@campbellandwilliams.com)
11 J. COLBY WILLIAMS #5549
(jcw@campbellandwilliams.com)
12 CAMPBELL & WILLIAMS
13 700 South 7th Street, Las Vegas, NV 89101
14 Telephone: (702) 382-5222; Fax: (702) 382-0540

15 *Attorneys for Defendant Zuffa, LLC, d/b/a
Ultimate Fighting Championship and UFC*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

20 Cung Le, Nathan Quarry, Jon Fitch, Brandon
21 Vera, Luis Javier Vazquez, and Kyle
Kingsbury on behalf of themselves and all
others similarly situated.

22 Plaintiffs,
23 v.

24 Zuffa, LLC, d/b/a Ultimate Fighting
25 Championship and UFC,

26 || Defendant.

Case No.: 2:15-cv-01045-RFB-(PAL)

**ZUFFA, LLC'S MOTION TO SEAL
ZUFFA'S OPPOSITION TO
PLAINTIFFS' MOTION TO
CERTIFY CLASS AND RELATED
MATERIALS**

1 Pursuant to the Stipulated Order governing confidentiality of documents entered by the
 2 Court on February 10, 2016, ECF No. 217 (“Protective Order”) and Rule 26(c) of the Federal
 3 Rules of Civil Procedure, Defendant Zuffa, LLC (“Zuffa”) respectfully requests that the Court
 4 order the Clerk of Court to file under seal those portions of Zuffa’s Opposition to Plaintiffs’
 5 Motion to Certify Class and the related materials lodged under seal in whole or in part.

6 For the reasons below and as listed in Zuffa’s Motion to Seal Plaintiffs’ Motion to Certify
 7 Class and Related Materials, ECF No. 527, compelling reasons and good cause exist to seal
 8 Zuffa’s Opposition to the Class Certification Motion (“Opposition”) and documents related to the
 9 Opposition that have been lodged partially or entirely under seal. The Opposition and the
 10 documents related to the Opposition contain trade secret and commercially sensitive information
 11 which, if disclosed, would be likely to cause Zuffa or third parties unjustified competitive harm.

12 The Court previously granted Zuffa’s motion to seal documents related to and certain
 13 portions of Plaintiffs’ Class Certification Motion and Zuffa’s Motions to Exclude the Testimony
 14 of Dr. Hal J. Singer, Dr. Andrew Zimbalist, and Guy A Davis. ECF No. 533. In addition, the
 15 Court previously granted Zuffa’s motion to seal those documents filed in connection with Zuffa’s
 16 Motion for Partial Summary Judgment as to Plaintiff Nathan Quarry on Statute of Limitations
 17 Grounds. The Court found that compelling reasons existed to file those documents under seal.
 18 ECF Nos. 495.

19 The Court should make the same finding that compelling reasons exist to seal portions of
 20 the Opposition and the related documents at issue here as they are of the same sensitivity and
 21 disclosure would result in the same risk of competitive harm as those from Plaintiffs’ Motion to
 22 Class Certification and the partial summary judgment motion. In addition, certain documents
 23 examined, quoted, and included here contain trade secret and commercially sensitive information,
 24 and should be sealed under the “compelling reasons” standard.

25 **Legal Standard**

26 In the Ninth Circuit, if a motion is “more than tangentially related to the underlying cause
 27 of action,” compelling reasons are necessary to justify sealing materials. *Ctr. for Auto Safety v.*
 28 *Chrysler Grp., LLC*, 809 F.3d 1092, 1101, 1103 (9th Cir. 2016). However, if that is not the case,

1 only good cause is necessary to justify sealing. *Id.* at 1097. The Ninth Circuit has not addressed
 2 the issue of whether a class certification motion and materials filed with that motion must meet
 3 the “compelling reasons” standard or the less onerous “good cause” standard. *Gustafson v.*
 4 *Goodman Mfg. Co. LP*, No. CV-13-08274-PCT-JAT, 2016 WL 393640, at *2 (D. Ariz. Feb. 2,
 5 2016) (explaining that the Ninth Circuit has not ruled on whether a class certification motion is a
 6 dispositive or non-dispositive motion or whether, under *Auto Safety*, the “compelling reasons”
 7 standard is properly applied to a class certification motion).

8 As to the good cause standard, a party seeking to file documents under seal pursuant to
 9 that standard must make a “particularized showing” under the “good cause standard of Rule
 10 26(c).” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (citations and
 11 quotation marks omitted). The Court has “broad latitude” under Rule 26(c) “to prevent disclosure
 12 of materials for many types of information, including, but not limited to, trade secrets or other
 13 confidential research, development, or commercial information.” *Phillips v. General Motors*
 14 *Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (citations omitted).

15 The “compelling reasons” standard requires a party to “articulate compelling reasons
 16 supported by specific factual findings that outweigh the general history of access and the public
 17 policies favoring disclosure.” *Kamakana*, 447 F.3d at 1179 (citations and quotation marks
 18 omitted). “Compelling reasons” have included preventing: disclosure of “sources of business
 19 information that might harm a litigant’s competitive standing,” *Nixon v. Warner Commc’ns, Inc.*,
 20 435 U.S. 589, 598 (1978) (citations omitted); the “release of trade secrets,” *Kamanaka*, 447 F.3d
 21 at 1179 (citing *Nixon*, 435 U.S. at 598); and “the release of . . . information [that] would result in
 22 an invasion of the privacy interests of third parties.” *GoDaddy.com LLC v. RPost Commc’ns*
 23 *Ltd.*, No. CV-14-00126-PHX-JAT, 2016 WL 1158851, at *5 (D. Ariz. Mar. 24, 2016), on
 24 reconsideration in part, No. CV-14-00126-PHX-JAT, 2016 WL 1274120 (D. Ariz. Mar. 31,
 25 2016).

26 The Ninth Circuit has held that certain “confidential and commercially sensitive
 27 information,” including licensing agreements containing “pricing terms, royalty rates, and
 28 guaranteed minimum payment terms” meet the “compelling reasons” standard and are properly

1 filed under seal. *In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008) ("Electronic Arts").
 2 The Ninth Circuit noted that these categories of information "plainly fall[] within the definition of
 3 'trade secrets' and explained that "a trade secret may consist of any formula, pattern, device or
 4 compilation of information which is used in one's business, and which gives him an opportunity
 5 to obtain an advantage over competitors who do not know or use it." *Id.* (citations and quotation
 6 marks omitted).

7 **Argument**

8 The documents and portions of its Opposition that Zuffa has lodged under seal in
 9 connection with its Opposition are properly filed under seal. Under either the "compelling
 10 reasons" or "good cause" standard, for the reasons stated in Zuffa's Motion to Seal Plaintiffs'
 11 Class Certification Motion, ECF No. 527, and described below, sealing is appropriate.

12 The documents and descriptions of the documents lodged under seal contain highly
 13 confidential and commercially sensitive information regarding Zuffa's contractual clauses with its
 14 athletes and information regarding Zuffa's athlete compensation terms, royalty and licensing
 15 policies, and other specific payment terms and strategies. Zuffa's trade secret information is
 16 contained within portions of the Opposition and related documents and the public release of that
 17 highly sensitive and confidential business information would result in competitive harm to Zuffa
 18 by providing its competitors with access to Zuffa's compensation structures, royalty and licensing
 19 policies, and confidential contracts—all crucial elements of Zuffa's proprietary business practices
 20 that have allowed it to vigorously compete in the marketplace for MMA athletes.

21 The Opposition and several of the attachments to the Opposition, particularly those
 22 portions of the motion that refer to or contain direct quotations from the expert reports in this
 23 matter, contain detailed analysis of Zuffa revenue and contractual information, including
 24 individual athlete-level and event-level information as well as individual athlete contracts. This
 25 type of information is very sensitive and MMA promoters are aware of the significant
 26 competitive risks they face if the data were to be released publicly. The sensitivity of this type of
 27 information is evidenced by Bellator's designation of its quarterly financial data as highly
 28 confidential under the Protective Order. Counsel for Bellator explained to this Court that the

1 “most sensitive documents” to Bellator included event-level specific financial information. ECF
 2 No. 438, June 1, 2017 Hearing Tr. 39:11-15 (describing event-level profit-and-loss statements for
 3 individual fights (or bouts) as “the most sensitive documents”). Counsel for Bellator further
 4 explained to the Court that any information that would permit a “Bellator fighter [to be] compared
 5 to this fighter, they’re disclosing our information,” which he characterized as “a very significant
 6 concern.” *Id.* at 16:16-21. In addition, several redacted portions of Plaintiffs’ Expert Reports and
 7 Zuffa’s Expert Reports contain aggregated (e.g., quarterly) and event-level financial data and
 8 sample individual athlete contracts and contractual terms from third party boxing and MMA
 9 promoters. This information is also highly sensitive and disclosure of that information would, as
 10 Bellator’s counsel recognized, be very likely to cause significant competitive harm if released
 11 publicly. Compelling reasons exist to seal the information Zuffa has already redacted and lodged
 12 under seal.

13 In addition, several of the documents, deposition excerpts, and portions of expert reports
 14 already lodged under seal contain quotations from or extended exposition of highly confidential
 15 and sensitive business communications and documents that contain strategic evaluation, payment
 16 information, and negotiation strategies relating to Zuffa and non-Zuffa MMA athletes. For the
 17 reasons above, release of this information would be very likely to cause competitive harm to
 18 Zuffa and provide an unfair and unearned competitive advantage to Zuffa’s competitors.
 19 Compelling reasons exist to seal the information that Zuffa has lodged under seal in whole or in
 20 part.

21 The Table below specifies justifications for sealing each of the exhibits or portions of the
 22 Opposition already lodged under seal:

23 //
 24 //
 25 //
 26 //
 27 //
 28 //

Type of Material Zuffa Seeks to Seal	Exhibits or Portions of Motion
1 2 3 4 5 6 7 8 9 Documents or portions thereof describing or providing event-level financial information or highly confidential internal valuation information or derived from or quoting from such information, such that trade secret information would be revealed if filed publicly and significant competitive harm would likely result.	Class Certification Opposition 16, 18, 24, 28, 30, 34, 37, 39, 40; Exhibits 1-8, 10-11, 42-44, 49-50, 64, 80-81, 87-89, 92, 109, 118-122, 126.
6 7 8 9 Documents or portions thereof describing or providing detailed information on trade secret business information and highly sensitive internal strategy information, disclosure of which would be very likely to result in unjustified competitive harm.	Class Certification Opposition 29, 30 & n.44, 39 & n.57; Exhibits 1-8, 10-11, 28, 42-44, 60, 66, 72, 75, 79-86.
10 11 12 13 14 15 16 17 18 19 Documents or portions thereof describing or providing highly confidential and trade secret information on Zuffa's contractual clauses and the trade secret internal policies relating to those contractual clauses. Disclosure of this trade secret information would be very likely to cause significant competitive harm to Zuffa.	Class Certification Opposition 5 & n.9, 6 & n.12-15, 15, 17, 20 & n.36, 30 & n.45, 31 & n.47-48, 33; Exhibits 1-8, 10-11, 19-26, 28-33, 35, 42-44, 49-55, 57, 59-61, 64-72, 74-86, 90-108, 110-117, 123-137.
Documents or portions therefore describing or providing information designated highly confidential by a third-party and/or third-party information, disclosure of which would be very likely to cause significant commercial harm. These types of documents often include highly sensitive third-party financial information, disclosure of which would be likely to cause competitive harm.	Class Certification Opposition 30 & n.45; Exhibits 17, 38, 45-47, 49, 50, 61, 64, 135, 137.

20
21
Conclusion

22
23
For the foregoing reasons, Zuffa respectfully requests that the Court find that "compelling
24
reasons" and "good cause" to seal the portions of the Opposition that Zuffa lodged under seal and
25
documents attached to the Opposition that were lodged, in whole or in part, under seal.

26
27
28
//

//.

//

//

1 Dated: April 6, 2018

BOIES SCHILLER FLEXNER LLP

3 /s/ Stacey K. Grigsby

4 Stacey K. Grigsby

5 *Attorneys for Defendant Zuffa, LLC, d/b/a*
Ultimate Fighting Championship and UFC

6 William A. Isaacson (*Pro hac vice*)

7 Stacey K. Grigsby (*Pro hac vice*)

8 Nicholas A. Widnell (*Pro hac vice*)

BOIES SCHILLER FLEXNER LLP

1401 New York Ave, NW

Washington, DC 20005

Tel: (202) 237-2727

Fax: (202) 237-6131

Email: sgrigsby@bsflp.com

12 Donald J. Campbell #1216

13 J. Colby Williams #5549

14 CAMPBELL & WILLIAMS

700 South 7th Street

Las Vegas, Nevada 89101

15 Tel: (702) 382-5222

Fax: (702) 382-0540

16 Email: djc@campbellandwilliams.com

17 jcw@campbellandwilliams.com

18 Richard J. Pocker #3568

19 BOIES SCHILLER FLEXNER LLP

300 South Fourth Street, Suite 800

20 Las Vegas, NV 89101

Tel: (702) 382-7300

21 Fax: (702) 382-2755

Email: rponce@bsflp.com

22 *Attorneys for Defendant Zuffa, LLC, d/b/a Ultimate*
23 Fighting Championship and UFC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Zuffa, LLC's Motion to Seal Zuffa's Opposition to Plaintiffs' Motion to Certify Class and Related Materials was served on April 6, 2018 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/Roderick Crawford

Roderick Crawford, an Employee of
Boies Schiller Flexner LLP